

ARTICLE I. GENERAL PROVISIONS¹ Rule 101. Scope	ARTICLE I. GENERAL PROVISIONS Rule 101. Scope; Definitions
<p>These rules govern proceedings in the courts of the United States and before the United States bankruptcy judges and United States magistrate judges, to the extent and with the exceptions stated in rule 1101.</p>	<p>(a) Scope. These rules apply to proceedings in United States courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101.</p> <p>(b) Definitions. In these rules:</p> <ul style="list-style-type: none"> (1) “civil case” means a civil action or proceeding; (2) “criminal case” includes a criminal proceeding; (3) “public office” includes a public agency; (4) “record” includes a memorandum, report, or data compilation; (5) a “rule prescribed by the Supreme Court” means a rule adopted by the Supreme Court under statutory authority; and (6) a reference to any kind of written material or any other medium includes electronically stored information.

Committee Note

The language of Rule 101 has been amended, and definitions have been added, as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

The reference to electronically stored information is intended to track the language of Fed. R. Civ. P. 34.

The Style Project

The Evidence Rules are the fourth set of national procedural rules to be restyled. The restyled Rules of Appellate Procedure took effect in 1998. The restyled Rules of Criminal Procedure took effect in 2002. The restyled Rules of Civil Procedure took effect in 2007. The restyled Rules of Evidence apply the same general drafting guidelines and principles used in restyling the Appellate, Criminal, and Civil Rules.

¹ Rules in effect on December 1, 2010 (including amendments to Rule 804(b)(3) scheduled to take effect on that date).

1. General Guidelines

Guidance in drafting, usage, and style was provided by Bryan Garner, *Guidelines for Drafting and Editing Court Rules*, Administrative Office of the United States Courts (1969) and Bryan Garner, *Dictionary of Modern Legal Usage* (2d ed. 1995). See also Joseph Kimble, *Guiding Principles for Restyling the Civil Rules*, in *Preliminary Draft of Proposed Style Revision of the Federal Rules of Civil Procedure*, at page x (Feb. 2005) (available at http://www.uscourts.gov/rules/Prelim_draft_proposed_pt1.pdf); Joseph Kimble, *Lessons in Drafting from the New Federal Rules of Civil Procedure*, 12 Scribes J. Legal Writing 25 (2008-2009). For specific commentary on the Evidence restyling project, see Joseph Kimble, *Drafting Examples from the Proposed New Federal Rules of Evidence*, 88 Mich. B.J. 52 (Aug. 2009); 88 Mich. B.J. 46 (Sept. 2009); 88 Mich. B.J. 54 (Oct. 2009); 88 Mich. B.J. 50 (Nov. 2009).

2. Formatting Changes

Many of the changes in the restyled Evidence Rules result from using format to achieve clearer presentations. The rules are broken down into constituent parts, using progressively indented subparagraphs with headings and substituting vertical for horizontal lists. “Hanging indents” are used throughout. These formatting changes make the structure of the rules graphic and make the restyled rules easier to read and understand even when the words are not changed. Rules 103, 404(b), 606(b), and 612 illustrate the benefits of formatting changes.

3. Changes to Reduce Inconsistent, Ambiguous, Redundant, Repetitive, or Archaic Words

The restyled rules reduce the use of inconsistent terms that say the same thing in different ways. Because different words are presumed to have different meanings, such inconsistencies can result in confusion. The restyled rules reduce inconsistencies by using the same words to express the same meaning. For example, consistent expression is achieved by not switching between “accused” and “defendant” or between “party opponent” and “opposing party” or between the various formulations of civil and criminal action/case/proceeding.

The restyled rules minimize the use of inherently ambiguous words. For example, the word “shall” can mean “must,” “may,” or something else, depending on context. The potential for confusion is exacerbated by the fact the word “shall” is no longer generally used in spoken or clearly written English. The restyled rules replace “shall” with “must,” “may,” or “should,” depending on which one the context and established interpretation make correct in each rule.

The restyled rules minimize the use of redundant “intensifiers.” These are expressions that attempt to add emphasis, but instead state the obvious and create negative implications for other rules. The absence of intensifiers in the restyled rules does not change their substantive meaning. See, e.g., Rule 104(c) (omitting “in all cases”); Rule 602 (omitting “but need not”); Rule 611(b) (omitting “in the exercise of discretion”).

The restyled rules also remove words and concepts that are outdated or redundant.

4. Rule Numbers

The restyled rules keep the same numbers to minimize the effect on research. Subdivisions have been rearranged within some rules to achieve greater clarity and simplicity.

5. *No Substantive Change*

The Committee made special efforts to reject any purported style improvement that might result in a substantive change in the application of a rule. The Committee considered a change to be “substantive” if any of the following conditions were met:

- a.* Under the existing practice in any circuit, the change could lead to a different result on a question of admissibility (e.g., a change that requires a court to provide either a less or more stringent standard in evaluating the admissibility of particular evidence);
- b.* Under the existing practice in any circuit, it could lead to a change in the procedure by which an admissibility decision is made (e.g., a change in the time in which an objection must be made, or a change in whether a court must hold a hearing on an admissibility question);
- c.* The change would restructure a rule in a way that would alter the approach that courts and litigants have used to think about, and argue about, questions of admissibility (e.g., merging Rules 104(a) and 104(b) into a single subdivision); or
- d.* The amendment would change a “sacred phrase” — one that has become so familiar in practice that to alter it would be unduly disruptive to practice and expectations. Examples in the Evidence Rules include “unfair prejudice” and “truth of the matter asserted.”

Rule 102. Purpose and Construction	Rule 102. Purpose
<p>These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.</p>	<p>These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.</p>

Committee Note

The language of Rule 102 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 103. Rulings on Evidence	Rule 103. Rulings on Evidence
<p>(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and</p> <p>(1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or</p> <p>(2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.</p> <p>Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.</p>	<p>(a) Preserving a Claim of Error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:</p> <p>(1) if the ruling admits evidence, a party, on the record:</p> <p>(A) timely objects or moves to strike; and</p> <p>(B) states the specific ground, unless it was apparent from the context; or</p> <p>(2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.</p> <p>(b) Not Needing to Renew an Objection or Offer of Proof. Once the court rules definitively on the record — either before or at trial — a party need not renew an objection or offer of proof to preserve a claim of error for appeal.</p>
<p>(b) Record of offer and ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. It may direct the making of an offer in question and answer form.</p>	<p>(c) Court's Statement About the Ruling; Directing an Offer of Proof. The court may make any statement about the character or form of the evidence, the objection made, and the ruling. The court may direct that an offer of proof be made in question-and-answer form.</p>
<p>(c) Hearing of jury. In jury cases, proceedings shall be conducted, to the extent practicable, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury.</p>	<p>(d) Preventing the Jury from Hearing Inadmissible Evidence. To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.</p>
<p>(d) Plain error. Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.</p>	<p>(e) Taking Notice of Plain Error. A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.</p>

Committee Note

The language of Rule 103 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 104. Preliminary Questions	Rule 104. Preliminary Questions
<p>(a) Questions of admissibility generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.</p>	<p>(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.</p>
<p>(b) Relevancy conditioned on fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.</p>	<p>(b) Relevance That Depends on a Fact. When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.</p>
<p>(c) Hearing of jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.</p>	<p>(c) Conducting a Hearing So That the Jury Cannot Hear It. The court must conduct any hearing on a preliminary question so that the jury cannot hear it if:</p> <ul style="list-style-type: none"> (1) the hearing involves the admissibility of a confession; (2) a defendant in a criminal case is a witness and so requests; or (3) justice so requires.
<p>(d) Testimony by accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.</p>	<p>(d) Cross-Examining a Defendant in a Criminal Case. By testifying on a preliminary question, a defendant in a criminal case does not become subject to cross-examination on other issues in the case.</p>
<p>(e) Weight and credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.</p>	<p>(e) Evidence Relevant to Weight and Credibility. This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.</p>

Committee Note

The language of Rule 104 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 105. Limited Admissibility	Rule 105. Limiting Evidence That Is Not Admissible Against Other Parties or for Other Purposes
When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.	If the court admits evidence that is admissible against a party or for a purpose — but not against another party or for another purpose — the court, on timely request, must restrict the evidence to its proper scope and instruct the jury accordingly.

Committee Note

The language of Rule 105 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 106. Remainder of or Related Writings or Recorded Statements	Rule 106. Remainder of or Related Writings or Recorded Statements
<p>When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.</p>	<p>If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part — or any other writing or recorded statement — that in fairness ought to be considered at the same time.</p>

Committee Note

The language of Rule 106 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

<p align="center">ARTICLE II. JUDICIAL NOTICE</p> <p align="center">Rule 201. Judicial Notice of Adjudicative Facts</p>	<p align="center">ARTICLE II. JUDICIAL NOTICE</p> <p align="center">Rule 201. Judicial Notice of Adjudicative Facts</p>
<p>(a) Scope of rule. This rule governs only judicial notice of adjudicative facts.</p>	<p>(a) Scope. This rule governs judicial notice of an adjudicative fact only, not a legislative fact.</p>
<p>(b) Kinds of facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.</p>	<p>(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:</p> <ul style="list-style-type: none"> (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.
<p>(c) When discretionary. A court may take judicial notice, whether requested or not.</p> <p>(d) When mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.</p>	<p>(c) Taking Notice. The court:</p> <ul style="list-style-type: none"> (1) may take judicial notice on its own; or (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.
<p>(e) Opportunity to be heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.</p>	<p>(d) Timing. The court may take judicial notice at any stage of the proceeding.</p>
<p>(f) Time of taking notice. Judicial notice may be taken at any stage of the proceeding.</p>	<p>(e) Opportunity to Be Heard. On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.</p>
<p>(g) Instructing jury. In a civil action or proceeding, the court shall instruct the jury to accept as conclusive any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed.</p>	<p>(f) Instructing the Jury. In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.</p>

Committee Note

The language of Rule 201 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

<p align="center">ARTICLE III. PRESUMPTIONS IN CIVIL ACTIONS AND PROCEEDINGS</p> <p align="center">Rule 301. Presumptions in General in Civil Actions and Proceedings</p>	<p align="center">ARTICLE III. PRESUMPTIONS IN CIVIL CASES</p> <p align="center">Rule 301. Presumptions in Civil Cases Generally</p>
<p>In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.</p>	<p>In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.</p>

Committee Note

The language of Rule 301 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 302. Applicability of State Law in Civil Actions and Proceedings	Rule 302. Applying State Law to Presumptions in Civil Cases
In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.	In a civil case, state law governs the effect of a presumption regarding a claim or defense for which state law supplies the rule of decision.

Committee Note

The language of Rule 302 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

<p align="center">ARTICLE IV. RELEVANCY AND ITS LIMITS</p> <p>Rule 401. Definition of “Relevant Evidence”</p>	<p align="center">ARTICLE IV. RELEVANCE AND ITS LIMITS</p> <p>Rule 401. Test for Relevant Evidence</p>
<p>“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.</p>	<p>Evidence is relevant if:</p> <ul style="list-style-type: none"> (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.

Committee Note

The language of Rule 401 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 402. Relevant Evidence Generally Admissible; Irrelevant Evidence Inadmissible	Rule 402. General Admissibility of Relevant Evidence
<p>All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible.</p>	<p>Relevant evidence is admissible unless any of the following provides otherwise:</p> <ul style="list-style-type: none"> • the United States Constitution; • a federal statute; • these rules; or • other rules prescribed by the Supreme Court. <p>Irrelevant evidence is not admissible.</p>

Committee Note

The language of Rule 402 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 403. Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time	Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons
<p>Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.</p>	<p>The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.</p>

Committee Note

The language of Rule 403 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 404. Character Evidence Not Admissible to Prove Conduct; Exceptions; Other Crimes	Rule 404. Character Evidence; Crimes or Other Acts
<p>(a) Character evidence generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:</p> <p>(1) Character of accused. In a criminal case, evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same, or if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidence of the same trait of character of the accused offered by the prosecution;</p> <p>(2) Character of alleged victim. In a criminal case, and subject to the limitations imposed by Rule 412, evidence of a pertinent trait of character of the alleged victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the alleged victim offered by the prosecution in a homicide case to rebut evidence that the alleged victim was the first aggressor;</p> <p>(3) Character of witness. Evidence of the character of a witness, as provided in Rules 607, 608, and 609.</p>	<p>(a) Character Evidence.</p> <p>(1) <i>Prohibited Uses.</i> Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.</p> <p>(2) <i>Exceptions for a Defendant or Victim in a Criminal Case.</i> The following exceptions apply in a criminal case:</p> <p>(A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;</p> <p>(B) subject to the limitations in Rule 412, a defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:</p> <p style="padding-left: 40px;">(i) offer evidence to rebut it; and</p> <p style="padding-left: 40px;">(ii) offer evidence of the defendant's same trait; and</p> <p>(C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.</p> <p>(3) <i>Exceptions for a Witness.</i> Evidence of a witness's character may be admitted under Rules 607, 608, and 609.</p>

<p>(b) Other crimes, wrongs, or acts. Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.</p>	<p>(b) Crimes, Wrongs, or Other Acts.</p> <p>(1) <i>Prohibited Uses.</i> Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.</p> <p>(2) <i>Permitted Uses; Notice in a Criminal Case.</i> This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On request by a defendant in a criminal case, the prosecutor must:</p> <p>(A) provide reasonable notice of the general nature of any such evidence that the prosecutor intends to offer at trial; and</p> <p>(B) do so before trial — or during trial if the court, for good cause, excuses lack of pretrial notice.</p>
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Committee Note

The language of Rule 404 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 405. Methods of Proving Character	Rule 405. Methods of Proving Character
<p>(a) Reputation or opinion. In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into relevant specific instances of conduct.</p>	<p>(a) By Reputation or Opinion. When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow an inquiry into relevant specific instances of the person's conduct.</p>
<p>(b) Specific instances of conduct. In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.</p>	<p>(b) By Specific Instances of Conduct. When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.</p>

Committee Note

The language of Rule 405 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 406. Habit; Routine Practice	Rule 406. Habit; Routine Practice
<p>Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.</p>	<p>Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.</p>

Committee Note

The language of Rule 406 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 407. Subsequent Remedial Measures	Rule 407. Subsequent Remedial Measures
<p>When, after an injury or harm allegedly caused by an event, measures are taken that, if taken previously, would have made the injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove negligence, culpable conduct, a defect in a product, a defect in a product's design, or a need for a warning or instruction. This rule does not require the exclusion of evidence of subsequent measures when offered for another purpose, such as proving ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.</p>	<p>When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:</p> <ul style="list-style-type: none"> • negligence; • culpable conduct; • a defect in a product or its design; or • a need for a warning or instruction. <p>But the court may admit this evidence for another purpose, such as impeachment or — if disputed — proving ownership, control, or the feasibility of precautionary measures.</p>

Committee Note

The language of Rule 407 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 407 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

Rule 408. Compromise and Offers to Compromise	Rule 408. Compromise Offers and Negotiations
<p>(a) Prohibited uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction:</p> <p>(1) furnishing or offering or promising to furnish—or accepting or offering or promising to accept—a valuable consideration in compromising or attempting to compromise the claim; and</p> <p>(2) conduct or statements made in compromise negotiations regarding the claim, except when offered in a criminal case and the negotiations related to a claim by a public office or agency in the exercise of regulatory, investigative, or enforcement authority.</p>	<p>(a) Prohibited Uses. Evidence of the following is not admissible — on behalf of any party — either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:</p> <p>(1) furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in order to compromise the claim; and</p> <p>(2) conduct or a statement made during compromise negotiations about the claim — except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.</p>
<p>(b) Permitted uses. This rule does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness’s bias or prejudice; negating a contention of undue delay; and proving an effort to obstruct a criminal investigation or prosecution.</p>	<p>(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness’s bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.</p>

Committee Note

The language of Rule 408 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 408 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

The Committee deleted the reference to “liability” on the ground that the deletion makes the Rule flow better and easier to read, and because “liability” is covered by the broader term “validity.” Courts have not made substantive decisions on the basis of any distinction between validity and liability. No change in current practice or in the coverage of the Rule is intended.

Rule 409. Payment of Medical and Similar Expenses	Rule 409. Offers to Pay Medical and Similar Expenses
Evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible to prove liability for the injury.	Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

Committee Note

The language of Rule 409 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 410. Inadmissibility of Pleas, Plea Discussions, and Related Statements	Rule 410. Pleas, Plea Discussions, and Related Statements
<p>Except as otherwise provided in this rule, evidence of the following is not, in any civil or criminal proceeding, admissible against the defendant who made the plea or was a participant in the plea discussions:</p> <ul style="list-style-type: none"> (1) a plea of guilty which was later withdrawn; (2) a plea of nolo contendere; (3) any statement made in the course of any proceedings under Rule 11 of the Federal Rules of Criminal Procedure or comparable state procedure regarding either of the foregoing pleas; or (4) any statement made in the course of plea discussions with an attorney for the prosecuting authority which do not result in a plea of guilty or which result in a plea of guilty later withdrawn. <p>However, such a statement is admissible (i) in any proceeding wherein another statement made in the course of the same plea or plea discussions has been introduced and the statement ought in fairness be considered contemporaneously with it, or (ii) in a criminal proceeding for perjury or false statement if the statement was made by the defendant under oath, on the record and in the presence of counsel.</p>	<ul style="list-style-type: none"> (a) Prohibited Uses. In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions: <ul style="list-style-type: none"> (1) a guilty plea that was later withdrawn; (2) a nolo contendere plea; (3) a statement made during a proceeding on either of those pleas under Federal Rule of Criminal Procedure 11 or a comparable state procedure; or (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea. (b) Exceptions. The court may admit a statement described in Rule 410(a)(3) or (4): <ul style="list-style-type: none"> (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record, and with counsel present.

Committee Note

The language of Rule 410 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 411. Liability Insurance	Rule 411. Liability Insurance
Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.	Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

Committee Note

The language of Rule 411 has been amended as part of the general restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 411 previously provided that evidence was not excluded if offered for a purpose not explicitly prohibited by the Rule. To improve the language of the Rule, it now provides that the court may admit evidence if offered for a permissible purpose. There is no intent to change the process for admitting evidence covered by the Rule. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402, 403, 801, etc.

<p>Rule 412. Sex Offense Cases; Relevance of Alleged Victim's Past Sexual Behavior or Alleged Sexual Predisposition</p>	<p>Rule 412. Sex-Offense Cases: The Victim's Sexual Behavior or Predisposition</p>
<p>(a) Evidence Generally Inadmissible. The following evidence is not admissible in any civil or criminal proceeding involving alleged sexual misconduct except as provided in subdivisions (b) and (c):</p> <p style="padding-left: 40px;">(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.</p> <p style="padding-left: 40px;">(2) Evidence offered to prove any alleged victim's sexual predisposition.</p>	<p>(a) Prohibited Uses. The following evidence is not admissible in a civil or criminal proceeding involving alleged sexual misconduct:</p> <p style="padding-left: 40px;">(1) evidence offered to prove that a victim engaged in other sexual behavior; or</p> <p style="padding-left: 40px;">(2) evidence offered to prove a victim's sexual predisposition.</p>
<p>(b) Exceptions.</p> <p style="padding-left: 40px;">(1) In a criminal case, the following evidence is admissible, if otherwise admissible under these rules:</p> <p style="padding-left: 80px;">(A) evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury or other physical evidence;</p> <p style="padding-left: 80px;">(B) evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and</p> <p style="padding-left: 80px;">(C) evidence the exclusion of which would violate the constitutional rights of the defendant.</p> <p style="padding-left: 40px;">(2) In a civil case, evidence offered to prove the sexual behavior or sexual predisposition of any alleged victim is admissible if it is otherwise admissible under these rules and its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. Evidence of an alleged victim's reputation is admissible only if it has been placed in controversy by the alleged victim.</p>	<p>(b) Exceptions.</p> <p style="padding-left: 40px;">(1) Criminal Cases. The court may admit the following evidence in a criminal case:</p> <p style="padding-left: 80px;">(A) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;</p> <p style="padding-left: 80px;">(B) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; and</p> <p style="padding-left: 80px;">(C) evidence whose exclusion would violate the defendant's constitutional rights.</p> <p style="padding-left: 40px;">(2) Civil Cases. In a civil case, the court may admit evidence offered to prove a victim's sexual behavior or sexual predisposition if its probative value substantially outweighs the danger of harm to any victim and of unfair prejudice to any party. The court may admit evidence of a victim's reputation only if the victim has placed it in controversy.</p>

<p>(c) Procedure To Determine Admissibility.</p> <p>(1) A party intending to offer evidence under subdivision (b) must—</p> <p>(A) file a written motion at least 14 days before trial specifically describing the evidence and stating the purpose for which it is offered unless the court, for good cause requires a different time for filing or permits filing during trial; and</p> <p>(B) serve the motion on all parties and notify the alleged victim or, when appropriate, the alleged victim’s guardian or representative.</p> <p>(2) Before admitting evidence under this rule the court must conduct a hearing in camera and afford the victim and parties a right to attend and be heard. The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.</p>	<p>(c) Procedure to Determine Admissibility.</p> <p>(1) Motion. If a party intends to offer evidence under Rule 412(b), the party must:</p> <p>(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;</p> <p>(B) do so at least 14 days before trial unless the court, for good cause, sets a different time;</p> <p>(C) serve the motion on all parties; and</p> <p>(D) notify the victim or, when appropriate, the victim’s guardian or representative.</p> <p>(2) Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing must be and remain sealed.</p>
	<p>(d) Definition of “Victim.” In this rule, “victim” includes an alleged victim.</p>

Committee Note

The language of Rule 412 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 413. Evidence of Similar Crimes in Sexual Assault Cases	Rule 413. Similar Crimes in Sexual-Assault Cases
(a) In a criminal case in which the defendant is accused of an offense of sexual assault, evidence of the defendant's commission of another offense or offenses of sexual assault is admissible, and may be considered for its bearing on any matter to which it is relevant.	(a) Permitted Uses. In a criminal case in which a defendant is accused of a sexual assault, the court may admit evidence that the defendant committed any other sexual assault. The evidence may be considered on any matter to which it is relevant.
(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.	(b) Disclosure to the Defendant. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.
(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.	(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.
<p>(d) For purposes of this rule and Rule 415, "offense of sexual assault" means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved—</p> <p>(1) any conduct proscribed by chapter 109A of title 18, United States Code;</p> <p>(2) contact, without consent, between any part of the defendant's body or an object and the genitals or anus of another person;</p> <p>(3) contact, without consent, between the genitals or anus of the defendant and any part of another person's body;</p> <p>(4) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on another person; or</p> <p>(5) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(4).</p>	<p>(d) Definition of "Sexual Assault." In this rule and Rule 415, "sexual assault" means a crime under federal law or under state law (as "state" is defined in 18 U.S.C. § 513) involving:</p> <p>(1) any conduct prohibited by 18 U.S.C. chapter 109A;</p> <p>(2) contact, without consent, between any part of the defendant's body — or an object — and another person's genitals or anus;</p> <p>(3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;</p> <p>(4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or</p> <p>(5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4).</p>

Committee Note

The language of Rule 413 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 414. Evidence of Similar Crimes in Child Molestation Cases	Rule 414. Similar Crimes in Child-Molestation Cases
<p>(a) In a criminal case in which the defendant is accused of an offense of child molestation, evidence of the defendant's commission of another offense or offenses of child molestation is admissible, and may be considered for its bearing on any matter to which it is relevant.</p>	<p>(a) Permitted Uses. In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.</p>
<p>(b) In a case in which the Government intends to offer evidence under this rule, the attorney for the Government shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.</p>	<p>(b) Disclosure to the Defendant. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least 15 days before trial or at a later time that the court allows for good cause.</p>
<p>(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.</p>	<p>(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.</p>

<p>(d) For purposes of this rule and Rule 415, “child” means a person below the age of fourteen, and “offense of child molestation” means a crime under Federal law or the law of a State (as defined in section 513 of title 18, United States Code) that involved—</p> <p>(1) any conduct proscribed by chapter 109A of title 18, United States Code, that was committed in relation to a child;</p> <p>(2) any conduct proscribed by chapter 110 of title 18, United States Code;</p> <p>(3) contact between any part of the defendant’s body or an object and the genitals or anus of a child;</p> <p>(4) contact between the genitals or anus of the defendant and any part of the body of a child;</p> <p>(5) deriving sexual pleasure or gratification from the infliction of death, bodily injury, or physical pain on a child; or</p> <p>(6) an attempt or conspiracy to engage in conduct described in paragraphs (1)–(5).</p>	<p>(d) Definition of “Child” and “Child Molestation.” In this rule and Rule 415:</p> <p>(1) “child” means a person below the age of 14; and</p> <p>(2) “child molestation” means a crime under federal law or under state law (as “state” is defined in 18 U.S.C. § 513) involving:</p> <p>(A) any conduct prohibited by 18 U.S.C. chapter 109A and committed with a child;</p> <p>(B) any conduct prohibited by 18 U.S.C. chapter 110;</p> <p>(C) contact between any part of the defendant’s body — or an object — and a child’s genitals or anus;</p> <p>(D) contact between the defendant’s genitals or anus and any part of a child’s body;</p> <p>(E) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or</p> <p>(F) an attempt or conspiracy to engage in conduct described in subparagraphs (A)–(E).</p>
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Committee Note

The language of Rule 414 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Rule 415. Evidence of Similar Acts in Civil Cases Concerning Sexual Assault or Child Molestation	Rule 415. Similar Acts in Civil Cases Involving Sexual Assault or Child Molestation
(a) In a civil case in which a claim for damages or other relief is predicated on a party's alleged commission of conduct constituting an offense of sexual assault or child molestation, evidence of that party's commission of another offense or offenses of sexual assault or child molestation is admissible and may be considered as provided in Rule 413 and Rule 414 of these rules.	(a) Permitted Uses. In a civil case involving a claim for relief based on a party's alleged sexual assault or child molestation, the court may admit evidence that the party committed any other sexual assault or child molestation. The evidence may be considered as provided in Rules 413 and 414.
(b) A party who intends to offer evidence under this Rule shall disclose the evidence to the party against whom it will be offered, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered, at least fifteen days before the scheduled date of trial or at such later time as the court may allow for good cause.	(b) Disclosure to the Opponent. If a party intends to offer this evidence, the party must disclose it to the party against whom it will be offered, including witnesses' statements or a summary of the expected testimony. The party must do so at least 15 days before trial or at a later time that the court allows for good cause.
(c) This rule shall not be construed to limit the admission or consideration of evidence under any other rule.	(c) Effect on Other Rules. This rule does not limit the admission or consideration of evidence under any other rule.

Committee Note

The language of Rule 415 has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.